

Rane

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CAS-338-2016 (SR.902)
CAS-336-2019 &
SA(ST)--29807-2015
8.3.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 338 OF 2016

IN

SECOND APPEAL (ST) NO. 29807 OF 2015

ALONGWITH

CIVIL APPLICATION NO. 336 OF 2019

IN

CIVIL APPLICATION NO. 904 OF 2017

(for bringing legal heirs on record of respondent no.3)

IN

SECOND APPEAL (ST) NO. 29807 OF 2015

ALONGWITH

CIVIL APPLICATION NO. 339 OF 2016

(FOR STAY)

IN

SECOND APPEAL (ST) NO. 29807 OF 2015

Shri. Dattu Bala @ Santu Patil
Age-61 years, Occup-Agriculture
Residing at Village-Kandur
Taluka-Shirala, District- Sangli

.....Applicant

V/s.

1. Shri. Maruti Bapu Patil
Age-31 years, Occ-Agriculture
Residing at Village-Kandur
Taluka-Shirala, District- Sangli

2. Shr. Namdev Bala Patil
Age-62 years, Occ-Agriculture
Residing at Village-Kandur,

Rane

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CAS-338-2016 (SR.902)
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8.3.2019

Taluka-Shirala, District-Sangli

3. Smt. Gangubai Balu Pawar
Age-79 years, Occ-Household
Residing at Village - Dholewadi
Taluka-Shirala, District- Sangli.

4. Shri. Dnyandev Bapu Gaikwad
Age-50 years, Occ- Agriculture
Residing at Village- Fufire,
Taluka-Shirala, District- Sangli.

....Respondents

* * * *

Mr. Dilip Shinde, Advocate for the applicant-appellant.

Mr. Nikhil Pawar, Advocate for respondents no.1, 2 and 4.

CORAM : SANDEEP K. SHINDE, J.

Friday, 8th March, 2019.

ORAL JUDGMENT :

1. The appellant was defendant no.1 in the suit for partition being Regular Civil Suit No. 799 of 1992. The suit was decreed by the Learned Civil Judge Junior Division, Islampur on 26th April, 2013. The para-10 of the trial Court judgment shows suit proceedings were adjourned at the

request of defendant no.1 to afford him opportunity to adduce evidence. However, he did not lead evidence at all. His Advocate had filed a purshis and informed the learned Judge that, he had no instructions from defendant no.1. The trial Court, therefore afforded one more opportunity to the appellant to lead evidence on 5th April, 2013 but once again he failed to adduce the evidence. Thus, the decree passed by the trial Court was not an ex-parte decree.

2. Aggrieved by the decree of the trial Court dated 26th April, 2013, the appellant-defendant no.3 had preferred Regular Civil Appeal before the learned District Judge, Islampur alongwith Misc. Application No. 53 of 2013 for condonation of 291 days delay occurred in filing the Appeal. The applicant sought condonation of delay on two grounds, namely, (i) that he had sustained injury to his leg because of which he was not able to move out of the house, and (ii) that due to the strike of lawyers, then started on 29th July, 2013 and continued till September, 2013 he could not file the

Appeal and this period needs to be excluded while, computing the period of limitation.

3. The Learned District Judge rejected the application vide order dated 19th July, 2014, against which, this Second Appeal is preferred.

4. Even this appeal is preferred beyond the period of limitation and therefore vide Civil Application No. 338 of 2016 the appellant is seeking condonation of delay of one year and two months occurred in filing the present Second Appeal.

5. Heard learned Counsel for the applicant and learned Counsel for the respondent.

6. Perused the impugned order, as well as, the judgment of the trial Court in Regular Civil Suit No. 799 of 1992.

7. So, far as the delay occurred in preferring the Regular Civil Appeal is concerned, though the decree was passed by the trial Court on 26th April, 2013 defendant no.1 had applied for the certified copy on 20th June, 2013 and received it on 26th June, 2013. Appeal was filed in December, 2013. Though, it was contended that, he had suffered leg injury, he did not place on record Medical Certificate. Another ground was that, he could not file the Appeal due to the strike of lawyers in Kolhapur District. However, it appears, the agitation had started on 29th July, 2013 and it was over at the end of September, 2013. Regular Civil Appeal was filed in December, 2013. There is no explanation as to why the Appeal was not preferred immediately after strike was called off. In the circumstances, the learned District Judge rejected the application for condonation of delay having found no sufficient cause whatsoever, was shown.

8. The learned Counsel for the appellant, would submit that, the appellant had handed over the decree of the trial Court to his lawyer for drafting the First Appeal, however, he could not file the Appeal immediately. It is on this ground, he would urge that the delay was not intentional but for the reasons beyond the control and therefore the same may be condoned by imposing reasonable cost.

9. It may be stated that, before the trial Court, the appellant did not lead the evidence, though sufficient opportunity was afforded as could be seen from the observations in para-10 of the judgment. It further shows that, the appellant, defendant no.1 did not give instructions to his Advocate and therefore in the interest of justice, the trial Court issued notice to the defendant and afforded one more opportunity to lead evidence. Even thereafter, he did not lead the evidence. It shows that, the applicant was well aware of the suit proceedings and thus it cannot be said

that, he was not aware of the decree passed by the trial Court in April, 2013. Even otherwise, he applied for the certified copies in June, 2013 i.e. nearly after two months and this delay on his part has not been explained. The appellant has not placed any evidence on record to show that, he had sustained injuries and therefore he could not move out of the house. There is absolutely, no explanation as to why the Regular Civil Appeal was not filed soon after the lawyers strike was called off. In the circumstances, I do not see any reason to interfere with the order passed by the learned District Judge which is impugned in this Second Appeal.

10. That even otherwise, in Civil Application No. 338 of 2016 filed in this Court for condonation of delay caused in preferring the Second Appeal, no sufficient cause is shown. The applicant sought condonation of delay only on the ground that, he had no sufficient funds to pay the court-fees and that after collecting the money from his relatives, he

could approach the lawyer in Mumbai for filing the Second Appeal against the order dated 19th July, 2014 passed by the learned District Judge, Islampur in Misc. Application No. 53 of 2013.

11. That for the reasons stated hereinabove, there is no merit in the Second Appeal. The Appeal fails and dismissed. Consequently, the Civil Applications also failed. They are dismissed accordingly.

(SANDEEP K. SHINDE, J)